


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22



08-CV-01371-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HECTOR FRANCISCO DIAZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

CASE NO. C08-1371JLR
ORDER


This matter comes before the court on Petitioner Hector Francisco Diaz's motion for a certificate of appealability under 28 U.S.C. § 2253(d) (Dkt. # 29). Mr. Diaz seeks to appeal the court's August 10, 2009 order denying his 28 U.S.C. § 2255 motion (Dkt. # 26). For the reasons stated below, the court DENIES the motion for a certificate of appealability (Dkt. # 29).

Among the substantial changes to federal habeas corpus procedure in the Antiterrorism and Effective Death Penalty Act of 1996 is a rule that a petitioner can appeal the denial of a 28 U.S.C. § 2255 motion only after obtaining a "certificate of appealability." 28 U.S.C. 2253(c). The Ninth Circuit has held that a United States District Court may issue a certificate of

1 appealability. *United States v. Asrar*, 116 F.3d 1268, 1269 (9th Cir. 1997). A court may issue a
2 certificate of appealability only if the “applicant has made a substantial showing of the denial of
3 a constitutional right.” 28 U.S.C. § 2253(c)(2). The Supreme Court has elaborated that a
4 petitioner must show that “reasonable jurists could debate whether . . . the petition should have
5 been resolved in a different matter or that the issues presented were adequate to deserve
6 encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal
7 quotation omitted).

8 Here, Mr. Diaz has not made a substantial showing of the denial of a constitutional right
9 or demonstrated that the denial of his 28 U.S.C. § 2255 motion was debatable or wrong. The
10 court therefore DENIES his motion for a certificate of appealability (Dkt. # 29).

11 Dated this 29th day of October, 2009.

12 
13 JAMES L. ROBART
14 United States District Judge
15
16
17
18
19
20
21
22